

REMARKS

This is in response to the official action dated November 18, 2004.
Reconsideration in view of the following is respectfully requested.

In reviewing the examiner's comments, it is stated that the argued properties of improved styling (as shown in the comparative examples) are not part of the claims. The claims are amended to reflect the particular styling improvements achieved with the novel combination: wet hair – improved feeling and combability; and dry hair-improved volume, combability and texture. The data supporting these improvements is found in the specification, but is also set forth in the attached Rule 132 Declaration.

It is further maintained that the two references are not properly combined, and in any event, do not suggest the particular surprising improvements as set forth in the proposed claims. Specifically, Penska is primarily a skin composition for increasing blood flow. While the composition may be present in a hair care composition as well, the specification makes clear that the goal is nonetheless to increase blood flow to the skin (or scalp), even in the form of a hair care composition. There is no contemplation that any of the ingredients will improve hair care management in any way.

On the contrary, Franzke is a composition specifically formulated for temporary coloring of the hair. It is not seen why a skilled artisan having the Penska reference for a skin composition for increasing blood flow, contained in a hair care composition, would have any motivation to add a coloring pigment, in order to achieve a hair care composition providing the qualities of wet combability, feeling of the hair when wet, dry combability, texture when dry or body when dry. None of these qualities are contemplated by the references.

The examiner's position is that Franzke teaches both titanium dioxide and the claimed mica/TiO₂ compounds as pigments. However, Penska includes TiO₂ not as a pigment for coloring of hair, but as a sunscreen agent. If the skilled artisan was looking

to use other sunscreen agents, he would not find that suggestion in Franzke, which says nothing about such compounds as sunscreen agents.

The examiner continues to maintain a position that the motivation to combine the references need not be the same as applicant's motivation. However, there must be *some* motivation. In this case, it is simply hindsight to suggest substituting the mica/TiO₂ for TiO₂, since the original use is as a sunscreen, while the alleged substitution is only used as a coloring pigment. Even if the latter compound has an inherent sunscreen property, it is irrelevant in terms of motivation.

Wherefore, allowance of all claims is earnestly solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,
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By 

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